

**ARIZONA JUDICIAL COUNCIL'S  
LIMITED JURISDICTION COURTS COMMITTEE**

**Arizona State Courts Building  
Conference Room 345A & B  
Phoenix, AZ 85007**

**February 14, 2001**

**Members Attending:**

Honorable Michael Lester, Chair  
Honorable George Anagnost  
Ms. Kathy Barrett  
Honorable Sherry Geisler  
Honorable Larry Imus  
Mr. Theodore Jarvi  
Ms. Pamela Jones

Honorable John Kennedy  
Ms. Barbara Lasater  
Honorable Toni Lorona  
Honorable Antonio Riojas, Jr.  
Honorable Mary Scott  
Mr. Paul Thomas  
Honorable R. Michael Traynor

**Absent Members:**

Mr. Don Jacobson (excused)  
Honorable Manuel Figueroa (excused)  
Honorable G. M. Osterfeld (excused)

Mr. Ben Rowe, Jr. (excused)  
Mr. Frank Startzell (excused)  
Honorable William Sutton, Jr. (excused)

**Guests:**

Mr. Don Taylor

**Staff:**

Ms. Paula Davey  
Mr. George Diaz, Jr.  
Mr. Tom Edwards  
Ms. Debby Finkel  
Ms. Theresa Gonzales  
Ms. Jennifer Greene  
Ms. Debra Hall  
Ms. Lori Johnson  
Ms. Karen Karowski

Ms. Deborah Marshall  
Ms. Sandra Reyes  
Mr. David Sands  
Ms. Janet Scheiderer  
Mr. Patrick Scott  
Mr. Mike Sills-Trausch  
Mr. Ted Wilson  
Mr. David Withey

**REGULAR BUSINESS**

**1. Call to Order**

Judge Michael Lester called the meeting to order at 11:10 a.m. He welcomed new members, Judge Mary Scott and Ms. Pamela Jones.

**2. Approval of Minutes from the November 29, 2000 Meeting**

Judge Lester asked if there were any changes or corrections to the November meeting minutes.

**MOTION:** Motion was made and seconded to **approve the minutes from the November 29, 2000 meeting as presented. The motion was passed unanimously. LJC-01-01.**

## **INFORMATION/POTENTIAL ACTION ITEMS**

### **3. Legislative Proposals**

Mr. George Diaz, Jr. introduced Mr. Don Taylor from the Phoenix City Prosecutor's Office. Mr. Taylor is the part of the appeals section and acts at the legislative liaison.

Mr. Taylor present H.B. 2124 which is a strike everything bill and impacts A.R.S. § 28-3473 (C). Currently first offense for driving on a suspended license is categorized as a class 1 misdemeanor, but the defendant ends up with fine and surcharges. The bill proposes that this violation becomes a civil traffic violation instead of a misdemeanor. It was modeled after A.R.S. § 13-702 (E). It gives the prosecutor the opportunity to change the plea from a misdemeanor to a civil penalty because law enforcement is unable to determine if there were prior convictions at the time of citation.

Concerns expressed:

- \* Are the computer systems capable of switching between criminal and civil on the same citation?
- \* The prosecutor is not on site for all hearings to amend the citation.
- \* Will due process occur?
- \* If the defendant has not paid a fine and the suspension is based on the failure to pay, how much of a detriment is getting a civil penalty?
- \* What standards will a court use to decide if the case is civil or criminal?
- \* Is the intent for prosecutors to lower the burden of proof?
- \* Does this mean that a judge has to accept a guilty plea without the prosecutor present?
- \* Judges would have to inform defendants of the new differentiation between 1<sup>st</sup> and 2<sup>nd</sup> offenses to ensure equal protection issues. A 2<sup>nd</sup> hearing would result. All defendants would end up going to the prosecutors and maybe get a civil penalty.
- \* State will not allege priors, law enforcement won't know and the prosecutor is not involved in the case that early.
- \* What is the efficiency to the courts? Both civil and criminal require hearings.
- \* Is the goal compliance with law or just shifting cases from criminal to civil?
- \* How will MVD treat this?

- \* Multi-charge citation forms will need review for changes to the form itself.
- \* Can the prosecutors handle the plea issue before the stipulated guilty plea is entered with the court with a stipulated guilty plea?

Judge Lester stated that LJC is advising the AOC legislative liaisons to strongly opposed this. He suggested that this bill should perhaps be withdrawn for this year and work with the courts to resolve some of the issues.

Mr. Diaz reviewed the status of some bills that impact limited jurisdiction courts and are being tracked.

HB 2053 and 2095 both require two-year driver license suspensions for 18, 19 and 20 year olds who violate the underage drinking and driving law.

HB 2182 doubles the fine for DUI offenses.

HB 2277 allows for 1<sup>st</sup> class mail service of a complaint for running a red light. Also allows of the registered owner of the involved vehicle to be cited if the driver cannot be identified.

HCR 2013 allows the legislature to override court rules. The Supreme Court would not be allowed to infringe on victim rights.

Judge George Anagnost commended Mr. George Diaz and Mr. David Sands for their continuity and accessibility with legislative matters.

#### 4. **Arizona Judicial Code of Administration (ACJA) for Court Reporters**

Ms. Nancy Swetnam presented the ACJA for Temporary Court Reporters. An amendment was added in the "Purpose" section to clarify when there are stenographic transcripts. This change reflects changes in statute.

**MOTION:** Motion made and seconded to **adopt the ACJA for Temporary Court Reporters with the changes. Motion passed unanimously. LJC 01-02**

Ms. Swetnam presented the ACJA for Standard Court Reporters. There is no grandfathering clause at the request of Chief Justice Zlaket and Vice Chief Justice Jones. There is a requirement for proficiency and a test on the laws, rules and codes for Arizona. If the court reporter has passed the national proficiency test and is currently a member of the national professional organization, that individual does not need to take the exam. The candidate must pass 2/3 of the proficiency test to be given a one year provisional certification.

**MOTION:** Motion made and seconded to **approve the ACJA for Standard Court Reporters as written, giving deference to review by the Committee on Superior Court. Motion passed unanimously. LJC 01-03**

## **LUNCH BREAK**

### **5. ACJA for the Judicial Collection Fund (JCEF)**

Ms. Paula Davey stated there are no significant changes. Sections D3 and 4 are new to the code, however, they are standard components of the signed funding agreements.

Ms. Debby Finkel recommended that Sections D1 and 2 be changed from the 10<sup>th</sup> of the month to the 15<sup>th</sup> of the month to be consistent with the surcharge submission dates in statute.

**MOTION:** Motion made and seconded that **the code be adopted as changed. Motion passed unanimously. LJC 01-04**

### **6. ACJA for Records Retention and Disposition Schedule for Limited Jurisdiction Courts**

Mr. Ted Wilson stated that he may add some verbiage that reference rules pertaining to records retention and destruction. Records retention for electronic records is the same.

Suggestion to change 1a, g and gi for “or” to “and” was made. The concern was with the destruction of civil traffic cases while they are still pending. The judgment stands for five years, but the underlying case could be destroyed with no way of checking accuracy.

**MOTION:** Motion made and seconded to **approve the ACJA on Records Retention and Disposition Schedule for Limited Jurisdiction Courts with changing 1a, g and gi from “or” to “and”. Motion passed. LJC 01-05**

**MOTION:** Motion made and seconded to **change 2ai and d from “or” to “and”. Motion passed. LJC 01-06**

### **7. ACJA for Limited Jurisdiction Courts Committee**

Ms. Debby Finkel stated that the only significant change in the code is the elimination of the chief justice’s approval to appoint advisory committees.

**MOTION:** Motion made and seconded to approve the **ACJA for Limited Jurisdiction Courts as written. Motion passed.**

## **LJC 01-07.**

### **8. ACJA for Operational Reviews**

Mr. Mike Sills-Trausch stated that most of the changes made to the draft were formatting. Section C2 allows the use of reviews and audits conducted by county or city towns if they are similar in nature to the type of review done by the AOC.

D1 and 2 and E1 had slight modifications. Section H had a sentence deleted. COP, COSC and COJC reviewed and approved this code.

LJC's comments that were not included in the code may be incorporated in the CORE field review guide or redirected back to the drafters of the code.

Judge Lester said that LJC wanted an appeals process to resolve disagreements between the judge and the operational review report. There needs to be an avenue for a decision in the case of an impasse.

Judge Kennedy expressed concern about the report being used against a judge during an election or reappointment.

Judge Lester suggested that the tone of the code become more positive. Section A2d should become A2a. Section A1 should be stated more positively. Section C1 should add the word "any" to the phrase "and known problems".

Judge Kennedy and Ms. Barbara Lasater volunteered to help draft the appeals process. Judge Lester suggested that probation and superior court have input as well.

**NOTE:** Subsequent to the meeting Mr. Paul Thomas also volunteered to assist.

**MOTION:** Motion made and seconded to **send the ACJA on Operational Reviews back to committee for requested changes. Motion passed unanimously.**  
**LJC 01-08**

### **SUBCOMMITTEES**

### **9. Strategic Planning**

Ms. Lasater stated that the Maricopa County Justice Courts filmed a video for injunctions against harassment and orders of protection. The video is available through Mr. Patrick Scott, Public Access Specialist.

Mr. Scott said that the AOC wants to know about innovations for public access in order to act as a clearinghouse. An informational brochure on bonds is being reviewed as is a 15-page booklet that "walks" defendants through the criminal

process. Part of the clearinghouse plan is to assemble a resource library to share with others.

Judge Lester announced that he has been asked to be part of a panel that reviews Justice 2002 for strategic planning for the next 3-5 years.

#### **10. Forms & Rules Subcommittee**

**Rule 10. 2 Update** - Judge Lester stated that the change of judge upon request provision has been limited.

**Rules of Procedure for Civil Traffic Cases** - Judge Anagnost drafted changes to the 40 Rules of Procedures for Civil Traffic Cases. He had Mr. Gordon Griller review the draft. He was given consensus to proceed. The changes cleans up some inconsistencies and makes the process simpler.

Ms. Barrett noted that new Rule 33 has the lower court holding the filing fee for the appeals until the memorandum of appeal is filed. The court should have the filing fee made out to the limited jurisdiction court and then send a court check to superior court. Otherwise there is a violation of MAS. Ms. Barrett then suggested timing the payment of the filing fee to the appellant's memorandum.

Mr. Ted Jarvi expressed concern that the draft was eliminating use of attorneys in these Rule changes.

Judge Lester suggested to bring the draft Rule changes back in May.

#### **11. Defensive Driving Subcommittee**

Ms. Kathy Barrett stated that the ACJA code was approved .

#### **12. Legislative Subcommittee**

Judge Michael Traynor reiterated that LJC members should participate in the weekly Friday conference calls to have an impact on changes that impact limited jurisdiction courts.

## OTHER BUSINESS

### 13. Filing Fees - Class E “Research in Locating a Document Fee”

Ms. Finkel reviewed a letter that was sent to a private investigator explaining the intent of the \$17 research fee. Mr. David Withey stated that continues to confusion as to how this fee is being assessed in the courts and clarification is needed. It was suggested that this letter be sent to all courts with a cover letter. Also suggested was posting this on the web on the *Forum Quorum* and on Wendell.

### 14. Additional Legislative Issues

Mr. David Sands brought up three bills for input by LJC. The 1<sup>st</sup> was one that impacts productivity credits for the justices of the peace. The 2<sup>nd</sup> was to restrict how justice courts sharing facilities and staffs. The 3<sup>rd</sup> takes the authority for administering consolidated justice courts away from the presiding judge of the county.

LJC members discouraged passage of any and all of them.

### 15. Terms of Service

Judge Lester informed the members that his term of service as chairman expires in June. Anyone interested in assuming the chairmanship should inform Ms. Finkel. Several members of the committee's term expire and they should inform Ms. Finkel as to their interest in being reappointed.

### 16. Call to the Public

Judge Lester called to the public. No one from the public responded.

### 17. Adjournment

**Motion:** Motion was made and seconded to **adjourn the meeting.**  
**Motion passed. LJC 01-09.**

Meeting was adjourned at 2:58 p.m.

Respectfully submitted,

Ms. Debby Finkel  
Staff to the Limited Jurisdiction Courts Committee